



# **Department of Justice**

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**STATEMENT OF  
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U.S. DEPARTMENT OF JUSTICE**

**BEFORE THE  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM  
U.S. HOUSE OF REPRESENTATIVES**

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**January 7, 2016**

**Statement of Peter J. Kadzik**  
**Assistant Attorney General, Office of Legislative Affairs**  
**U.S. Department of Justice**  
**Before the Committee on Oversight and Government Reform**  
**U.S. House of Representatives**  
**January 7, 2016**

Good morning, Chairman Chaffetz, Ranking Member Cummings, and distinguished Members of the Committee. I appreciate the opportunity to appear before you today to discuss our continuing efforts to respond to the Committee's information requests, including those requests specifically relating to the Department's policies on geolocation and other surveillance technology in the wake of the Supreme Court's 2012 decision in *United States v. Jones*.

I want to begin by assuring the Committee that we sincerely value the important role of congressional oversight, and, as the Attorney General and Deputy Attorney General have stated repeatedly, the Department is committed to accommodating the Committee's information needs, consistent with our law enforcement, national security, and prosecutorial responsibilities. The Department appreciates that oversight is a critical underpinning of the legislative process. Congressional committees, such as this one, need to gather information about how statutes are applied and funds are spent so that they can assess whether additional legislation is necessary, either to rectify practical problems in current law or to address problems not covered by current law. Oversight can shed valuable light on the Department's operations and thereby assist the Department in addressing problems that might not otherwise have been clear.

Consistent with the value we place on the critical role of congressional oversight, since the beginning of the 114<sup>th</sup> Congress the Department has testified in close to 60 congressional hearings and provided extensive information in more than 1,870 letters responding to inquiries from Members and committees. In every instance, we have strived to provide Congress with as much information as possible without compromising our law enforcement and national security efforts or our prosecutorial responsibilities. In addition to these law enforcement and national security sensitivities, the Department also has an obligation to protect certain Executive Branch institutional interests, including the confidentiality of attorney-client communications, attorney work product, and internal deliberations. We are, nonetheless, committed to working in good faith to accommodate the Committee's legitimate oversight interests, and we hope that the Committee will likewise continue to engage in good faith with the Department in a manner that recognizes the important law enforcement and confidentiality interests presented in certain instances. In particular, we trust that the Committee recognizes the paramount importance of ensuring that the Department's investigative and prosecutorial decisions are made without regard to political considerations or even the perception of political influence or pressure. Such political influence – and, indeed, the mere public perception of such influence – could undermine significantly our law

enforcement efforts and, in criminal matters, shake public and judicial confidence in the integrity and independence of the criminal justice process.

We recognize that it is difficult when the interests and prerogatives of the Legislative and Executive branches come into potential conflict. As you well know, that is why the Constitution envisions, and the Court of Appeals for the D.C. Circuit has recognized, that the branches will engage in a process of accommodation to avoid such conflicts. This approach to responding to the Committee's requests – attempting to balance and accommodate the respective interests of the coordinate branches – is wholly consistent with and, indeed, part of the give and take that the Constitution demands as the Court explained decades ago in the seminal oversight case of *United States v. AT&T Co.*, 567 F.2d 121 (D.C. Cir. 1977). I also should add that this longstanding approach is nonpartisan – administrations of both parties have relied upon it for decades and it has been supported by top Department officials, both Democrats and Republicans alike.

Consistent with this longstanding and well accepted approach, the Department has made efforts and will continue to make efforts to respond to the Committee's information requests regarding our policies on geolocation and other surveillance technology in the wake of the Supreme Court's 2012 decision in *United States v. Jones*. As the Committee is aware, these specific information requests implicate significant confidentiality interests as the particular memoranda you have requested include sensitive, law enforcement-related, confidential attorney work product prepared in anticipation of litigation. Specifically, these memoranda include internal deliberations of Department prosecutors about the legal, investigative, and strategic issues we face in our law enforcement efforts in light of the *Jones* decision. These documents include guidance to the Department's prosecutors about how to handle specific issues when they arise in the context of criminal prosecutions, as well as descriptions of a number of sensitive law enforcement techniques and the litigation risks that could arise following the *Jones* decision. Our disclosure of this internal work product would chill the candid assessments and analyses that are essential to sound decision-making in law enforcement matters and prosecutions. In addition, disclosure could jeopardize ongoing and future investigations and prosecutions by prematurely revealing the government's investigative and litigation strategies. Disclosure of the Department's internal analysis of investigative techniques used in federal criminal investigations would afford criminal targets an opportunity to preempt those tools, evade law enforcement detection, and frustrate future similar surveillance activities, and could pose a risk to individuals conducting surveillance, undermining our federal law enforcement efforts in a wide variety of cases. We know that the Committee understands and appreciates these compelling interests and shares our view that it is critical that we appropriately protect against unnecessary disclosures. Again, we look forward to continuing to work with the Committee to find a way to ensure that you have the information you need to perform effective oversight, while also safeguarding the important interests of the Department and the criminal justice system that are implicated by disclosure of the highly sensitive memoranda in this matter.

I also want to address directly the efforts the Department has already undertaken to work in good faith to accommodate the Committee's oversight interests in this matter. Recognizing the Committee's interests, we were pleased to brief Committee staff last September on the forms of legal process the Department uses for obtaining geolocation information. In the briefing, we described the wide variety of geolocation evidence that may be available in any given matter; explained how the legal process used in a given matter will depend on the type of information sought, the highly specific facts in a given matter, and the state of law and practice in a particular jurisdiction; and answered the Committee's questions on these issues. It is our understanding that these issues lie at the core of the Committee's oversight interests. We sincerely hope that our briefing on these matters was helpful to the Committee. As we have offered previously, we would be happy to provide additional briefings and answer any remaining questions in our ongoing effort to accommodate the Committee's information requests.

In conclusion, I emphasize again that the Department recognizes that congressional oversight is an important part of our system of government. At the same time, congressional oversight that implicates ongoing law enforcement efforts and investigative techniques, sensitive attorney work product, and internal deliberations presents unique confidentiality challenges and concerns. Despite these challenges, we remain optimistic that, by working together cooperatively, we will be able to satisfy the Committee's oversight interests in this matter, while also safeguarding the independence, integrity, and effectiveness of the Department's vital law enforcement efforts and prosecutorial responsibilities. The Department stands ready to continue this effort to accommodate your information needs and we hope that you will work with us toward that goal.

Thank you again for the opportunity to testify. I would be happy to answer your questions.